



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,498	03/15/2004	Aviv Eyal	FRIS.P729	9358
30554 7590 11/12/2008 SHEMWELL, MAHAMED ILLP 4880 STEVENS CREEK BOULEVARD SUITE 201 SAN JOSE, CA 95129-1034				
EXAMINER				
PANNALA, SATHYANARAYA R				
ART UNIT		PAPER NUMBER		
2164				
MAIL DATE		DELIVERY MODE		
11/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,498

Applicant(s)

EYAL ET AL.

Examiner

Sathyanarayan Pannala

Art Unit

2164

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,7-11 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7-11 and 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment filed on 8/1/2008 has been examined with amended claims 1, 3-4, 7-11, newly added claims 23-25 and cancelled claims 2, 5-7 and 12-22. In this Office Action, claims 1, 3-4, 7-11 and 23-25 are pending.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

3. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

4. Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
5. Claims 1-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-11 of US Patent 6,721,741 (Eval et al.). Although the conflicting claims are not identical, they are not patentably distinct from each other because it is well settled that omission of elements and their functioning is obvious expedient if the remaining elements perform the same function as before.
6. The following table shows the claims in the application 10/800498 that are rejected by the corresponding claims in the US Patent.

<i>Claims Comparison Table</i>	
10/800498	US Patent 6,721,741
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11

This is a judicially obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claim 1, 9-10 is also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention. It is a burden for examiner to analyze a "cellular network" in place of a "computer network". Applicant did not neither provide any citation of the specification in the Remarks section, nor the specification supports.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1, 9, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and specifics are:

11. Regarding claim 1, the phrase "being usable" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention, see claim 1, line 11. See MPEP § 2173.05(d).

12. Regarding claim 1, the phrase "concurrent **with or prior to** communication" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention, see claim 1, line 15. See MPEP § 2173.05(d).

13. Regarding claim 1, the phrase "enable to access" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention, see claim 1, line 1. See MPEP § 2173.05(d).

14. Regarding claim 9, the phrase "the med" is not a valid one, see claim 9, line 3. Appropriate correction is required.

Claim Rejections - 35 USC § 101

15. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

16. Claims 1, 3-4, 7-11 and 23-26 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility.

It is a burden for examiner to analyze a "cellular network" in place of a "computer network". Applicant did not neither provide any citation of the specification in the

Remarks section, nor the specification supports. Claims 3-4, 7-11 and 23-26 are dependent on claim 1 and they are also rejected under the same rationale.

Claim Rejections - 35 USC § 103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

17. Claims 1, 3-4, 7-11 and 23-26 are rejected under 35 U.S.C. § 102(b) as being unpatentable Hoffert et al. (U.S. Patent 5,983,176), and in view of Hejna, Jr. (US Patent 7,043,433) hereinafter Hejna.

18. As independent claims 1, Hoffert teaches as, a method to enable access to media resources on a network (col. 2, lines 51-53), the method comprising: Hoffert teaches the claimed, making each link in a collection of links available to a device over at least a cellular network portion of the network, each link being made available over at least the cellular network portion to locate a corresponding media resource that is stored at a network location remote to the device, each link enabling a media player of the device to playback media corresponding to at least one of audio or video from the remote network location using at least the cellular network portion (Fig. 1, col. 3, line 65 to col.4, line 3);

communicating a selected link from the collection to a device using at least the cellular network portion, the selected link being usable by the media player from the corresponding media resource that is located by the selected link (Fig. 1, col. 3, line 65 to col.4, line 8);

Hoffert does not explicitly teach devices accessing the link and playback. However, Hejna teaches the claimed media player on the device to access and playback (Fig. 8, col. 27, lines 48-59). Thus, it would have been obvious to one of ordinary skill in the data processing art at the time of the invention, to have combine the teachings of the cited references because Hejna's teachings would have allowed Hoffert's method for using the audience (listener) affinity to create and/or to present the altered media works to an audience (col. 2, lines 15-17).

concurrent with or prior to communicating the selected link, making a verification determination, from over at least the cellular network portion, that the selected link is

usable on the device to access the corresponding media resource that is located by the selected link (Fig. 1, col. 3, line 65 to col.4, line 3);

responsive to the verification determination being that the selected link is not available, controlling the device from over at least the cellular network portion to use another link from the collection (col. 23, lines 47-67; Appendix A, col. 3, lines 55-60 and Fig. 3A, col. 13, lines 20-24).

19. As per dependent claims 3, Hoffert teaches the claimed, further comprising: identifying one or more classes of information about at least some of the links in the collection, and storing the at least some of the plurality of links in association with the one or more classes of information (Fig. 1, col.3, lines 7-8).

20. As per dependent claims 4, Hoffert teaches the claimed, further comprising making the one or more classes of information available to the device for performing search operations (Fig. 1, col. 3, lines 8-9).

21. As per dependent claims 7, Hoffert teaches the claimed, wherein making a verification determination includes monitoring the media player attempting to open the corresponding media resource of the selected link (Fig. 3A, col. 13, lines 5-32).

22. As per dependent claims 8, Hoffert teaches the claimed, further comprising programmatically controlling a media player of the device in accessing and/or playing

back the resources that located by the links of the collection(Appendix A, col. 4, lines 2-3).

23. As per dependent claims 9, Hoffert teaches the claimed, wherein programmatically controlling the media player of the device includes controlling the media player from over at least the cellular network portion to not display a user interface when the playing back media located by one of the links in the collection (col. 22, line 66 to col. 23, line 2).

24. As per dependent claims 10, Hoffert teaches the claimed, wherein programmatically controlling the media player includes controlling the media player of the device from over the cellular network portion to reduce functionality in at least one of displaying, playing audio and processing portions of the corresponding media resource (Fig. 4E, col. 21, lines 1-10).

25. As per dependent claims 11, Hoffert teaches the claimed, wherein making a verification determination includes making the verification determination for each of the plurality of links to determine which of the links in the plurality of links are selectable to open the corresponding media resource of a specified data type (Fig. 1, col. 3, lines 7-9 and at col. 23, lines 47-67).

26. As per dependent claims 23, Hoffert teaches the claimed, making each link in the collection available to a given device's media player includes enabling the media resources located by each of links in the collection to be accessed and streamed to the media player continuously over the cellular network (col. 6, lines 34-38).

27. As per dependent claims 24, Hoffert and Hejna combined teaches claim 1. Hejna teaches the claimed, making each link in the collection available includes transmitting individual links that are selected by the given device to the media player of the given device (Fig. 8, col. 27, lines 41-59).

28. As per dependent claims 25, Hoffert and Hejna combined teaches claim 1. Hejna teaches the claimed, identifying a plurality of commands for use with the collection of links, and wherein making each link in the collection available includes packaging one or more commands into individual links that are transmitted to the given device for use in playing back media resources located by the individual links (Fig. 10, col.36, line 50 to col. 37, line 7).

29. As per dependent claims 26, Hoffert teaches the claimed, at least some of links in the collection locate corresponding media resources on two or more different Internet domains, and wherein making each link in the collection available includes enabling the media player to playback media resources from the two or more Internet Domains continuously, using at least two of the links in the collection (col. 9, lines 12-19).

Response to Arguments

30. Applicant's arguments filed 8/1/2008 have been fully considered but they are moot in view of the new ground(s) of rejection and details as follows:

- a) Applicant's argument stated as "applicant requests reconsideration of the rejection in view of the amended language present herewith."

In response to Applicant's argument, Examiner respectfully disagrees. Because, Applicant did not amend all claims to overcome double patent rejection. Therefore the rejection is maintained. In fact, additional rejection has been brought into because Applicant's Amendment forced to reject claims under 35 U.S.C. 112, 1 paragraph and 101 as claiming parts do not support the specification.

- b) Applicant's argument stated as "Applicants requests reconsideration of the claimed in view of the amendments."

In response to Applicant's argument, Examiner respectfully disagrees. Because, the new reference teaches the usable device and see Hejna at Fig. 8, col. 27, lines 41-59.

Conclusion

31. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sathyanarayan Pannala whose telephone number is (571) 272-4115. The examiner can normally be reached on 8:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on (571) 272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sathyanarayan Pannala/
Primary Examiner

srp
November 12, 2008